

## **CHAPTER 10-16-02 RETAILER**

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### **10-16-02-01. License application and fee.**

1. An applicant shall initially apply for a license for a site on a form prescribed by the lottery and remit an application fee of fifty dollars that is not refundable. The licensing fiscal year is October first through September thirtieth. An applicant may apply for a license for more than one site. A separate application is required for each site. Approval of an applicant is within the sole discretion of the lottery. Only one retailer may have a license for a specific site. A retailer shall apply for a renewal license for a site before October first of each year.
2. If the lottery approves an applicant for licensure for a site, the applicant shall remit a license fee of five hundred dollars for the applicant's first year for that site within fourteen days of when the applicant is notified by the lottery of its pending licensure. This fee is not prorated or refundable unless an applicant is disqualified according to section 10-16-02-03 before the applicant sells a ticket or a new owner purchases or leases a site and applies for a license before the former owner sells a ticket. After the first partial or full year of licensure, the annual license renewal fee for the site is one hundred fifty dollars and is not prorated or refundable on or after October first.
3. If a licensed alcoholic beverage establishment and an organization that is licensed under North Dakota Century Code chapter 53-06.1 to conduct a game of chance at that site both apply for a license for the site, the establishment has the first privilege. If the establishment does not apply and the organization does apply for a license, the organization shall obtain written authorization from the establishment and provide the authorization with the application. If the organization is issued a license, the establishment's authorization is valid as long as the organization is licensed to conduct a game of chance at that site.
4. A license allows a retailer to sell a ticket for all authorized games.

5. The lottery may license a retailer on a seasonal basis or temporary basis for a special event. A special event is an infrequent, significant, and identifiable activity in the community, such as a fair. The director of the lottery may waive the license fee for a temporary site for a presently licensed retailer that sells tickets on a temporary basis at a site for a special event.
6. The lottery may issue a conditional license to an applicant, shall designate the time period for which the license is valid, and may impose any conditions related to:
  - a. Determining whether an applicant or retailer is eligible for a license;
  - b. Issuing a license to an applicant or retailer whose regular license has been relinquished, suspended, or revoked;
  - c. Applying a minimum sales quota on an applicant or retailer;
  - d. Requiring an applicant or retailer to reimburse the lottery for the lottery's net cost of installing and maintaining the terminal and telecommunications equipment at a business if the applicant or retailer does not meet or maintain a mutually agreed minimum sales quota; or
  - e. Accessibility of a retailer to an individual who is disabled.
7. A license is a privilege and an applicant or retailer does not have a vested or legal right to the license.
8. Except as provided by subsection 5, an applicant's site must be a permanent business location.
9. The lottery may require a security deposit from an applicant or retailer.
10. If required by law, an applicant must be currently registered with the secretary of state.
11. A license may not be sold, transferred, assigned, pledged, or otherwise conveyed from a retailer to another person.
12. A retailer shall provide the lottery a thirty-day written notice of the retailer's intent to sell or otherwise transfer ownership of the retail business to another person. The acquiring person shall apply for a new license for that site if the person desires to be a retailer.
13. If a license becomes lost or destroyed, a retailer shall apply for a duplicate license and explain to the lottery what happened to the original license.

14. If the lottery denies an applicant a license, the lottery shall notify the applicant and state the reason for the denial.

**History:** Effective February 1, 2004; amended effective April 1, 2006.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-02, 53-12.1-03, 53-12.1-06, 53-12.1-07, 53-12.1-13

**10-16-02-02. Criteria for selecting an applicant.** The lottery shall consider criteria in selecting an applicant for licensure or relicensure as a retailer, including:

1. Geographic or strategic location of a business in a town, city, or community, and its location in relation to population, highways, and traffic patterns;
2. Accessibility of a business to the public and an unrestricted public access policy;
3. Regular contact with a significant number of persons and the average number of customer sales transactions per day;
4. Normal business hours and days of the week that the business is open;
5. Number of years the business has been operating at its present location;
6. Historical gross sales of nonlottery products or expected gross sales of lottery tickets of a business, or both;
7. Physical security of a business, safety of the money derived from selling a ticket, and whether the business has a video surveillance or alarm system;
8. Financial condition, financial responsibility, and creditworthiness of the business;
9. Criminal history record, character, and reputation of the applicant's agent;
10. Sufficiency of an existing retailer to serve the public convenience in an applicant's town, city, or community;
11. Anticipated or proven capability of a business to best serve the public interest by actively promoting the sale of a ticket, including displaying or providing point-of-sale promotional items to the public;
12. Initial or incremental cost of installing and maintaining a terminal and telecommunications equipment at a business or difficulty of using preferred telecommunications equipment;

13. Type of business and type of product, service, or entertainment offered at a site and whether it is acceptable to the general public and does not adversely impact the credibility, reputation, or image of the lottery. An applicant's primary retail business may not be to sell a lottery ticket. An eligible applicant may not be a pawnbroker, bank, check cashing or cash advance outlet, currency exchange business, credit union, consumer finance company, collection agency, or mortgage broker;
14. Type and volume of state government services available at a business, including fishing and hunting licenses;
15. Recommendation of the lottery's online gaming system vendor;
16. Accessibility of a business to a person who is disabled;
17. Type of building housing the business; and
18. Site inspection.

**History:** Effective February 1, 2004; amended effective April 1, 2006.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-02, 53-12.1-03, 53-12.1-06, 53-12.1-07, 53-12.1-13

#### **10-16-02-03. Record and credit checks.**

1. An applicant for a license shall request the lottery to do a North Dakota record check on the applicant's agent. The record check is to determine whether the person has a criminal history record that would disqualify the applicant for a license according to subdivision d of subsection 3 of North Dakota Century Code section 53-12.1-07. The lottery may require fingerprints of the person. After the initial licensure of an applicant, the retailer shall request the lottery to do a North Dakota record check and, if necessary, an out-of-state record check, on a new applicant's agent within thirty days of when the change occurred. The lottery may periodically do a followup record check on an applicant's agent and charge a fee.
2. If the applicant's agent resides or has resided in a state other than North Dakota during the previous five years, the lottery shall do an out-of-state record check on that person through the other state. The person shall procure any necessary fingerprint card or special authorization form, or both, which is or are required by the other state from the lottery and return the completed card or form, or both, to the lottery within ten days after receiving it or them from the lottery.
3. An applicant shall request a record check on the applicant's agent by submitting a "lottery record/credit check" form for the applicant's agent and remit a nonrefundable fee in the amount prescribed by North Dakota

Century Code section 12-60-16.9 for a North Dakota record check and, if an out-of-state record check is required, remit the nonrefundable fee that is charged by the other state, to the lottery. The applicant shall remit the fee with the license application or form. However, if the person has had a record check done within one year of when the applicant applied for a license or renewal license and provides with the application a copy of the "lottery record/credit check" or similar form and, if applicable, a copy of the bureau of criminal investigation's criminal history record information the lottery may waive the requirement for a record check on that person.

4. A person's information on a criminal record may be disseminated only according to North Dakota Century Code chapter 12-60.
5. If an applicant's agent pleads guilty to or has been found guilty of a felony or misdemeanor offense as defined by the laws of this state, another state, or the federal government, the retailer shall immediately notify the lottery. Upon notification of a felony offense to the lottery:
  - a. If the applicant's agent is a general manager, the retailer shall terminate the general manager from employment;
  - b. If the applicant's agent is a partner of a partnership, the retailer shall terminate the partnership agreement with the affected partner;
  - c. If the applicant's agent is an officer or director who is primarily responsible for financial affairs of a corporation, the retailer shall delegate that responsibility away from the affected officer or director;
  - d. If the applicant's agent is a shareholder of a corporation, the retailer shall arrange for the shareholder to sell shares of stock to reduce the stock holding to less than ten percent of the common stock; or
  - e. The lottery shall suspend or revoke the retailer's license or take any other appropriation action.
6. The lottery shall do a credit check on an applicant that is a sole proprietorship, partnership, or corporation through a credit-reporting company or other reliable source to determine the applicant's financial condition and whether the applicant is financially responsible and credit worthy. The lottery shall prescribe the fee for a credit check. The fee is nonrefundable. The lottery may periodically do a followup credit check on a retailer and charge the fee.

7. A retailer shall retain a copy of the "lottery record/credit check" form for three years from the date it submitted the form to the lottery.

**History:** Effective February 1, 2004; amended effective April 1, 2006.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-02, 53-12.1-03, 53-12.1-06, 53-12.1-07, 53-12.1-13

**10-16-02-04. Change in business location, ownership, or name.**

1. If a retailer changes its business location, the lottery may reissue a license to the retailer to sell a ticket at the new location provided:
  - a. The retailer notifies the lottery, in writing, thirty days before the change is to occur;
  - b. The retailer stops selling a ticket at the old business location before it begins selling a ticket at the new business location; and
  - c. The lottery determines that reissuing a license to the retailer for the new business location would best serve the public convenience.
2. If a retailer changes the type of its business ownership, it shall notify the lottery in writing and apply for a new license thirty days before the change is to occur.
3. If a retailer changes the name of the business, it shall notify the lottery in writing thirty days before the change is to occur.

**History:** Effective February 1, 2004; amended effective April 1, 2006.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-02, 53-12.1-03, 53-12.1-06, 53-12.1-07, 53-12.1-13

**10-16-02-05. Training.** An employee of a retailer who is responsible for and who has no previous experience operating a terminal must be trained on how to properly operate the terminal by the retailer or lottery representative before the employee may sell or redeem a ticket. The lottery shall provide the retailer with a placard containing the relevant provisions of the law and rules for employees to read and reference.

**History:** Effective February 1, 2004; amended effective April 1, 2006.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-02, 53-12.1-03, 53-12.1-07, 53-12.1-13

**10-16-02-06. Duties.** A retailer shall:

1. Comply with the lottery law, rules, promotional rules, and terms of a license agreement prescribed by the lottery;

2. Display a lottery license in an area visible, but not accessible, to the public where a ticket is sold and redeemed. A retailer shall prominently display signage and promotional and point-of-sale items provided by the lottery. A retailer may advertise and use, display, or make available other appropriate promotional and point-of-sale items. On request of the lottery, a retailer shall discontinue an advertisement or promotion that the lottery determines is in noncompliance with subsections 2 and 3 of section 10-16-01-02;
3. Display a problem gambling helpline telephone number;
4. Provide a secure operating space for a terminal at a location approved by the lottery or its online gaming system vendor. A retailer may not move the terminal to a different location at a site without written authorization from the lottery. If the retailer desires to have the terminal relocated at the site, only a qualified representative of the lottery's online gaming system vendor may relocate the terminal;
5. Provide dedicated alternating current to a duplex electrical receptacle for lottery equipment, including a terminal. Only lottery equipment may be on the circuit. A retailer shall pay the installation cost of the receptacle and monthly costs of electricity to operate the lottery equipment. The lottery shall provide the retailer with a schematic of the required amperage, voltage, and wiring of the receptacle;
6. As requested by the lottery, have an employee attend a training session sponsored by the lottery, review training material, complete a terminal-based tutorial, or notify the lottery if a new employee needs training on operating a terminal;
7. Exercise care in operating a terminal and immediately notify the lottery's online gaming system vendor of a terminal malfunction, including the issuance of an invalid ticket, inability to sell or redeem a ticket, and nonissuance of a ticket. Except to clear a paper jam, the retailer may not perform mechanical or electrical maintenance on the terminal. Unless approved by the lottery, a retailer may not attach or adhere any stickers, decals, or advertisements on a terminal;
8. Replace ticket stock and clear a paper jam as necessary in a terminal;
9. Monitor the supply of game brochures, point-of-sale items, ticket stock, and play slips and notify the lottery or its online gaming system vendor when an item is in short supply;
10. Actively promote and sell a ticket and redeem a winning ticket during the retailer's core business hours on the days that the retailer is open and when a terminal is operating. If the retailer's core business hours are earlier or later, or both, than the hours that the terminal is operating,

the retailer shall post the hours during which a person may redeem a winning ticket;

11. Actively promote the sale of subscriptions;
12. Prohibit a person under age eighteen from buying a ticket or redeeming a winning ticket;
13. Not extend credit to a player or accept a credit card from a player for the purchase of a ticket or accept a food stamp or food coupon as consideration for a ticket. A player shall pay for a ticket when the ticket is bought from a retailer. If a retailer delivers a ticket to a player's residence, the player shall prepay or pay for the ticket upon delivery. A retailer may not loan money to or accept a postdated check from a player;
14. Maintain a level of ticket sales set by the lottery based on a minimum sales program;
15. Be financially responsible and personally liable to the lottery for money derived from the sale of a ticket, less money related to a sales commission and money paid on a redeemed winning ticket. The retailer shall allow money from the sale of a ticket that is deposited by the retailer in a bank account to be transferred to the lottery by electronic funds transfer on a weekly basis or other period prescribed by the lottery;
16. Store ticket stock, supplies, terminal, and related equipment in a safe place to prevent loss, theft, or damage;
17. Prominently post the winning numbers for a draw and estimated grand prize of the next draw of a game where a ticket is sold as soon as reasonably possible after the draw for the game;
18. Redeem a winning ticket and pay a prize of up to five hundred ninety-nine dollars in cash or by business check, regardless of which retailer sold the ticket. The retailer may not charge a fee for redeeming a ticket and may not refuse to redeem a winning ticket sold by another retailer;
19. File a claim for credit for a printed defective ticket as prescribed by the lottery;
20. Permit an employee or agent of the lottery who has first shown proper identification to the retailer to review the retailer's accounting records and inspect, maintain, replace, or remove lottery equipment, supplies, ticket stock, or a record or recorded video from the site without prior notice during the retailer's normal hours of operation;



21. Notify the lottery in writing thirty days before there is a change of the bank account maintained for electronic funds transfer;
22. Make it convenient for the public to buy and redeem a ticket. A retailer may sell a ticket through a drive-up window;
23. Have a copy of the lottery law and rules at the site available near the terminal for review by any person;
24. Incur the loss from theft of a ticket or gift certificate;
25. Defend, indemnify, and hold harmless the lottery and state of North Dakota from any claim of any nature, including all costs, expenses, and attorney's fees, that may result from or arise out of an agreement with the lottery, except for a claim that results from or arises out of the state's sole negligence;
26. Upon revocation, relinquishment, or nonrenewal of a license, immediately return all lottery-related equipment and supplies, including unused ticket stock. The retailer is liable for money still owed the lottery; and
27. Maintain complete and accurate records and retain them for one year related to the sale and redemption of a lottery ticket. Records must include:
  - a. Inventory log of the receipt and use of ticket stock; and
  - b. Weekly terminal-issued reports of electronic funds transfers transactions.

**History:** Effective February 1, 2004; amended effective April 1, 2006.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-02, 53-12.1-03, 53-12.1-08, 53-12.1-13

#### **10-16-02-07. Sales commission and bonus.**

1. The lottery shall credit a retailer's account for:
  - a. A sales commission of five percent of the retail price of a ticket sold or otherwise issued by the retailer;
  - b. A sales commission of five percent of the amount of an initial or renewal subscription sale that is transacted through the lottery on a subscription application form that is issued by the retailer's terminal or procured from the retailer with the retailer's license number on it. The retailer must be currently licensed when the subscription application form is processed by the lottery. There is no sales commission on the value of a prize on a winning subscription

play that automatically extends a subscription period according to subdivision a of subsection 10 of section 10-16-03-08.1; and

- c. A sales bonus for selling a ticket with a winning play, or for an initial or renewal subscription sale described by subdivision b, including an extended subscription period, that has a winning play, for a game as stated below. However, the retailer must be currently licensed when a draw is conducted that results in the winning play and when the winning ticket or subscription play is validated. The sales bonus is payable to the retailer after the winning ticket is validated by the lottery. If the winning play for POWERBALL® has the power play option, the retailer's account must also be credited for an additional bonus as stated below:

Prize	Bonus	Additional Bonus
<b>POWERBALL®</b>		
Grand prize	\$50,000	Additional \$50,000 with power play
\$200,000	\$2,500	Additional \$2,500 with power play
\$10,000	\$500	Additional \$500 with power play
<b>HOT LOTTO®</b>		
Grand prize	\$5,000	
\$10,000	\$500	
<b>WILD CARD 2®</b>		
Grand prize	\$2,000	
\$5,000	\$250	
<b>2BY2®</b>		
Grand prize	\$500	

2. The lottery may credit a retailer's account for a fixed or graduated sales commission or bonus for a special promotion, including power play, that the lottery conducts for a certain period of time based on parameters set by the lottery.

**History:** Effective February 1, 2004; amended effective January 1, 2006.

**General Authority:** NDCC, 53-12.1-13

**Law Implemented:** NDCC 53-12.1-02, 53-12.1-03, 53-12.1-13

#### **10-16-02-08. Bank account and electronic funds transfer.**

1. A retailer shall maintain a bank account at a financial institution that is insured by the federal deposit insurance corporation, federal credit union association, or federal savings and loan insurance corporation, located in North Dakota, and that is capable of electronic funds transfer.

This account may be a special or general account used for deposit of money derived from selling a ticket. The amount deposited must be sufficient to cover the amount due the lottery. This amount is generally computed as gross sales, less the retailer's sales commission and value of validated redeemed winning tickets. The retailer shall deposit the amount in the account within one banking day after the date of the sale by the retailer. The lottery may transfer the amount due to the lottery on a weekly basis or on demand by electronic funds transfer on a day specified by the lottery. If the day specified for the transfer is on a federal or state holiday, the transfer will be done on the following business day. The lottery may establish a payment term with a retailer to address a situation unique to that retailer. The retailer shall hold the money derived from selling a ticket in trust and in a fiduciary capacity for the lottery. The retailer is personally liable for the money owed the lottery and may not pledge the money in the account as collateral for a loan.

2. The lottery shall notify a retailer of the amount that is to be transferred from the bank account to the lottery before the electronic funds transfer occurs. A retailer shall notify the lottery of an error or dispute of the amount twenty-four hours before the transfer occurs.
3. A retailer shall pay the amount of a nonsufficient electronic funds transfer immediately by a certified or cashier's check or money order. If a nonsufficient funds transfer is not immediately covered, the lottery may assess the retailer a monetary fine, service charge, disable the terminal until the amount is paid, and suspend or revoke the retailer's license.

**History:** Effective February 1, 2004; amended effective April 1, 2006.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-02, 53-12.1-03, 53-12.1-13

**10-16-02-09. Recordkeeping.** Repealed effective April 1, 2006.

**10-16-02-10. Denial, suspension, or revocation of a license.** The lottery may deny, suspend, or revoke a license if the applicant's agent has a disqualifying criminal history record or an applicant or retailer:

1. Obtained a license by failing to complete, failing to disclose information, or misrepresenting data on an application;
2. Violated a lottery law, rule, or term of a license agreement;
3. Failed to meet or maintain eligibility criteria for licensure;
4. Failed to file a required security deposit;
5. Changed the location of a retail business;

6. Failed to demonstrate financial responsibility or maintain a reasonable financial condition of the business, a check issued for payment of a prize on a winning ticket or an electronic funds transfer of money from a retailer's bank account to the lottery was dishonored for any reason, or is delinquent in remitting money owed to the lottery;
7. Filed for, or was involuntarily placed in, bankruptcy or receivership;
8. Acted in a manner or is involved in an activity at a site that is harmful to the public confidence in the integrity, reputation, or image of the lottery;
9. Experienced recurring theft or other negative incidents at the site that endangers the security of the lottery;
10. Failed to produce for review a record, document, or other item required by a lottery law, rule, or term of a license agreement;
11. Knowingly sold a ticket to or redeemed a winning ticket from a person under age eighteen;
12. Failed to properly redeem or pay a player the proper prize for a winning play;
13. Failed to actively promote sales of tickets or properly display and provided point-of-sale promotional items to the public;
14. Failed to sell a minimum number of tickets as set by the lottery and another retailer adequately serves the public convenience; or
15. Failed to maintain an active federal employer identification number and, if necessary, North Dakota sales tax permit number.

**History:** Effective February 1, 2004; amended effective April 1, 2006.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-02, 53-12.1-03, 53-12.1-06, 53-12.1-07, 53-12.1-09, 53-12.1-13

**10-16-02-11. Monetary fine.** The lottery may impose a monetary fine on a retailer for failure to comply with a lottery law, rule, or term of a license agreement. The fine for each violation is a minimum of twenty-five dollars and may be in addition to or in place of a license suspension or revocation.

**History:** Effective February 1, 2004.

**General Authority:** NDCC 53-12.1-13

**Law Implemented:** NDCC 53-12.1-02, 53-12.1-03, 53-12.1-13